IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 762 OF 2006 .

Shri Ashok Muthana ... Petitioner.
V/s.
The Employees Provident Fund
Organisation & ors. ... Respondents.

Shri S.K. Talsania with K.S. Bapat i/b S.B.Shete for the petitioner.

Shri R.S. Sundaram with Shri Rajan for the respondents.

CORAM : V.C.DAGA, J.

DATED : 20.3.2006.

P.C. :

. Rule returnable forthwith by consent of parties.

. Perused petition. Heard rival parties.

. This petition is directed against the order dated 7.2.2006 passed by Recovery Officer/ Assistant P.F. Commissioner.

. One of the contentions sought to be canvassed on behalf of the petitioner is that there is no compliance of Rule 73 of II Schedule Income-tax Rules and, therefore, the impugned order is bad an illegal.

. Per contra, Shri Sundaram, learned Counsel

appearing for the respondents submitted that the notice was issued to the petitioner but the same was returned with the postal endorsement "Left". He, thus, submits that service of notice was proper. In his submission, there is a substantial compliance of provisions of Rule 73 of II Schedule of the I.T. Act. He has produced unsealed original envelope bearing postal endorsement "Left". Unfortunately, as stated, the envelope in question is not a sealed envelope. In this view of the matter, no presumption of service in the eye of law can be drawn.

. In the above background, both the parties submit that without examining merits or demerits of the order, the impugned order be set aside and proceeding be remitted back to respondent No.2 with a direction to respondent No.2 to give an opportunity of hearing to the petitioner.

. In the above view of the matter, it will be in the interest of justice to give one more opportunity to the petitioner to appear before respondent No.2.

. Shri Sundaram at this stage submits that considering huge recovery against the Company, it would be reasonable to direct the petitioner to deposit some amount towards part payment to show his

bonafides.

. While reacting the above submission, Shri Talsania, learned Senior Counsel for the petitioner expressed his willingness to deposit Rs. 1,00,000/- by way of deposit with respondent No.2. However, he submits that in the event, petitioner succeeds before respondent No.2 in establishing his contention, amount so deposited must be returned to the petitioner. In the event, submission advanced by the petitioner does not find favour with respondent No.2, it would be open for him to appropriate the amount so deposited towards the dues of the company without prejudice to his rights to challenge the adverse decision.

. Considering the above submissions and taking overall view of the matter, the impugned order dated 7.2.2006 incorporated at Ex.B is quashed and set aside subject to deposit of Rs. 1,00,000/- with the respondent No.2. The proceedings are remitted back to respondent No.2 with a direction to hear the petitioner and decide all the contentions which the petitioner may raise, by a reasoned order. In the event, petitioner succeeds he would be entitled to claim refund of the amount deposited. However, in the event of adverse order, respondent No.2 shall be entitled to appropriate the said amount towards dues of the company. All rival contentions are kept

open. The respondent No.2 shall not act upon the order if it is found to be adverse to the petitioner for two weeks from the date of communication of the said order. However, it would be open for the respondent No.2 to appropriate the amount of deposit so made towards provident fund recovery of the company during this period without prejudice to the legal rights of the petitioner.

. Petitioner to appear before respondent No.2 on 3.4.2006.

. Rule made absolute in terms of this order with no order as to costs.

(V.C.DAGA,J.)